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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,825	01/23/2002	Kazuaki Onishi	SHC0167	7787

7590 01/04/2007

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EXAMINER	
ANDERSON, CATHARINE L	
ART UNIT	**PAPER NUMBER**
3761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/054,825	ONISHI ET AL.	
	Examiner	Art Unit	
	C. Lynne Anderson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 October 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 12 October 2006 have been fully considered but they are not persuasive.

In response to the applicant's argument that the Examiner's rejection is based on what Chmielewski "allows for" as opposed to what Chmielewski actually teaches, it is noted that Chmielewski teaches an embodiment in which the supplementary absorbent batt is attached not to the topsheet but to an adjacent structure. This embodiment is not used by the Examiner to suggest that Chmielewski anticipates the instant claims, but rather to show that Chmielewski is not limited to the preferred embodiment shown in figure 2. Since Chmielewski is not limited to this embodiment, and teaches a desire to provide a pocket between the primary and secondary batts, the attachment of the secondary batt to be spaced apart from the primary batt would therefore be obvious to one of ordinary skill in the art.

With respect to the applicant's arguments regarding the arch-shaped pocket opening of Chmielewski, it is noted that Chmielewski discloses in column 15, lines 1-8, that the curvature of the pocket opening is not required for the article to function as intended.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chmielewski et al. (6,699,228).

Chmielewski discloses all aspects of the claimed invention with the exception of the opposite side edges of the supplementary absorbent batt assembly being space apart upwardly from the body facing surface of the primary absorbent batt assembly by a height of the barrier cuffs.

Chmielewski discloses a diaper, as shown in figure 1, comprising a primary absorbent batt assembly 34, a pair of barrier cuffs 501, and a supplementary absorbent batt assembly 70. The primary absorbent batt assembly 34 has a body facing surface sheet 30, a garment facing surface sheet 32, a front waist region 22, a rear waist region 24, and a crotch region 26. The barrier cuffs 501 have a proximal edge portion 304 and a distal edge portion 503, and extend along transversely opposite sides of the primary absorbent batt assembly 34 so as to rise up from the body facing surface, as shown in figure 2. The supplementary absorbent batt assembly 70 has a body facing surface 704 and an opposite surface 706, as shown in figure 2. The supplementary absorbent batt assembly 70 also has a proximal end portion 724 and distal end portion 728, as shown in figure 1, the proximal end portion 724 lying the front waist region 22. The distal end portion 728 is spaced apart upwardly from the primary absorbent batt assembly 34 to define a pocket opening 80 when under

tension from, and therefore supported by, the barrier cuffs 501, as shown in figure 3.

Chmielewski discloses in column 10, lines 3-6, the rear edge 728 of the supplementary absorbent batt assembly 70 may be attached to portions of the primary absorbent batt assembly adjacent the topsheet. It would have been obvious to one of ordinary skill in the art at the time of invention to space the opposite side edges of the supplementary absorbent batt assembly being space apart upwardly from the body facing surface of the primary absorbent batt assembly, since the applicant has not shown that this configuration serves any stated purpose or solves any stated problem, and Chmielewski has disclosed the intention to attach the supplementary absorbent batt assembly at positions other than the topsheet of the primary assembly. It appears the invention would perform equally well with the opposite side edges of the supplementary absorbent batt assembly being spaced slightly apart from or attached to the body facing surface of the primary absorbent batt assembly, since either configuration allows for the formation of a pocket opening between the supplementary and primary absorbent batt assemblies, thus allowing the invention to perform equally well either way.

With respect to claim 2, the primary absorbent batt assembly comprises a liquid pervious topsheet 30, a liquid impervious backsheet 32, and a liquid absorbent first core 34, as shown in figure 2.

With respect to claim 3, the supplementary absorbent batt assembly 70 comprises a liquid absorbent second core 702 and a liquid pervious sheet 704, as shown in figure 2.

With respect to claim 4, the barrier cuffs 501 include elastic members 504, as shown in figure 2.

With respect to claim 5, the distal end portions 503 of the barrier cuffs 501 are positioned inwardly of the proximal end portions 304, as shown in figure 2.

With respect to claim 6, a pair of gasket cuffs 302 extend outwardly from the transverse opposite side edges of the liquid absorbent first core 34, as shown in figure 2.

With respect to claim 7, the gasket cuffs include elastic members 36, as shown in figure 2.

With respect to claim 8, the proximal ends 304 of the barreir cuffs 501 are attached to the gasket cuffs 302.

With respect to claim 11, the supplementary absorbent batt assembly 70 comprises a higher percentage of superabsorbent material than the primary absorbent batt assembly 34, as disclosed in column 9, lines 22-23, and column 10, lines 54-59, and therefore has a higher absorbing capacity.

Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chmielewski et al. (6,699,228) as applied to claim 1 above, and further in view of Onishi (JP1996-196565A).

Chmielewski discloses all aspects of the claimed invention with the exception of a second supplementary absorbent batt assembly. Onishi discloses a diaper having a supplementary absorbent batt assembly located in the front waist region, as shown in figure 1. Onishi further discloses a second supplementary absorbent batt assembly located in the rear waist region and smaller than the supplementary absorbent batt assembly, the second supplementary absorbent batt assembly forming a pocket between the crotch region and the rear waist region, as shown in figure 2. The second supplementary absorbent batt assembly provides a way to trap waste and minimize contact of the waste with the wearer of the diaper, as described in paragraph 16. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the diaper of Chmielewski with a second supplementary absorbent batt assembly, as taught by Onishi, to trap waste and minimize contact of the waste with the wearer of the diaper.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 and 9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3-5 of U.S. Patent No. 6,921,394. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims disclose all limitations of the instant claims but discloses a disposable wearable article rather than a disposable diaper.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

cla
December 21, 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER